## **Testimony of**

## Cambridge Consumers' Council Massachusetts Consumers' Coalition

# By Corey R. Pilz Cambridge Consumers' Council

Before the Joint Committee on Community Development and Small Business Commonwealth of Massachusetts

> Representative Linda Dorcena Forry, Co-Chair Senator Sal N. DiDomenico, Co-Chair

Committee Hearing Examining Item Pricing Legislation: S. 77, S. 1844, S. 1848, H. 987, H. 993, H. 994, H. 995, and H. 1869.

04 May 2011

Chairwoman Forry, Chairman DiDomenico, and Members of the Committee on Community Development and Small Business:

My name is Corey Pilz, Consumer Information Specialist for the Cambridge Consumers' Council. The Council, a City of Cambridge agency, works in cooperation with the Office of the Attorney General in investigating and monitoring consumer problems and trends in the marketplace. Using the experience and information gained from the hundreds of individual complaints filed each year by area residents, the Council serves as an informed voice offering suggestions for new or amended legislation that would influence consumer protection for the citizenry. My testimony today is also on behalf of the Massachusetts Consumers' Coalition, an association of local, state and federal consumer agencies; consumer advocacy organizations; and nonprofit agencies who are concerned with protecting the citizenry and ensuring fairness in the marketplace.

To begin, I wish to thank you for the opportunity to testify today. Before you are several pieces of proposed legislation regarding the Food Store Item Pricing Law, which have prompted great distress among consumer advocates throughout the Commonwealth as each piece of legislation essentially seeks to weaken or repeal the current law. As such, we ask you to *oppose S. 77, S. 1844, S. 1848, H. 987, H. 993, H. 994, H. 995, H. 1869* and maintain the current law and the fundamental protections it affords to consumers.

In this testimony, we hope to provide background on why the current law is not only beneficial to consumers, but how the current item pricing is preferred among shoppers in comparison to the alternatives offered by these bills. We will then comment on why the proposed changes to the law would only hurt consumers in the long run by creating an unlevel playing field within the relationship between the consumer and the retailer.

### **SUMMARY**

The Food Store Item Pricing Law (M.G.L. c. 94, §184B-E) essentially requires goods to be individually priced with stickers or tags in grocery stores and other stores that maintain food departments. Such a system allows consumers to easily identify the price of an item just by looking at it. As the law stands, all items are required to be individually priced using such a method unless it falls within one of the categories of exemptions. The Office of the Attorney General also maintains a regulation (940 CMR 3.13(1)) promulgated pursuant to M.G.L. c. 93A, §2(c) that is applicable to retail stores that carry non-grocery items. Such regulation also requires items to be individually priced by sticker or tag unless (1) the item falls within one of the categories of exemptions or (2) the store installs and maintains self-service price check scanners every 5,000 square feet which allow the consumer to affix the price to the item.

Although no Attorney General has brought an action under this regulation, the Food Store Law allows enforcement by means of compliance inspections conducted by the Director of the Commonwealth's Division of Standards or his inspectors, and sealers and inspectors of weights and measures. For example, the Division of Standards fined ten (10) food retailers a total of \$143,750 after finding 2,443 instances where items were missing pricing labels over the course of

<sup>&</sup>lt;sup>1</sup> My written testimony, presentation and responses to questions are my own and do not necessarily reflect the views of the City of Cambridge or any member of the Cambridge City Council.

one hundred (100) different store locations after a series of inspections conducted in July 2010.<sup>2</sup> Such an enforcement mechanism has proven to be an essential component in adequately measuring and ensuring compliance by food stores.

It also important to recognize that the Attorney General modified the above referenced regulation in July 2003 by adding an exemption to allow retails stores to stop individually pricing items if a self-service price scanner was installed every 5,000 square feet. Once again, this regulation only applies to non-food stores, and not the grocery store, supermarket, warehouse clubs or retailers with food departments. Thus, it is important to consider the grocery shopping experience versus shopping at another retailer when you consider the bills in front of you today.

### THE BENEFITS AND PROTECTIONS OF ITEM PRICING

Price disclosure has always been seen as a fundamental way for consumers to exercise their rights within the marketplace whether they are purchasing an automobile or a box of cereal. The current Food Store Law allows consumers to easily identify the price of an item just by looking at it and provides for many additional benefits that proposed alternatives simply do not allow for.

By allowing a consumer to easily access the price of an item, we are enabling them to make smart buying decisions, which is especially essential during these rough economic times. As it stands, item pricing makes comparing the price of goods uncomplicated. For example, if I wanted to compare the price of a store brand can of vegetables with a name brand, currently I could do so by merely contrasting the two price stickers. Without a price sticker on the can, it can easily become a hassle to determine which shelf tag goes with which can, especially when the cans have found themselves intermingled on the shelf.

If the price stickers or tags slowly disappear from items, the burden of pricing an item will slowly start to shift from that of the retailer to the consumer—both while standing in the aisle and at the checkout counter. Using the price sticker on an item, the consumer can verify that the price on the item, the price on the shelf and the price at the checkout counter are all the same. Without the sticker, this verification process is all but eliminated and such a process is essential to the grocery shopping experience given the frequency of sales. Many shoppers check their receipts at the end of a sale to ensure they were charged properly for all items, particularly sale items. Without a price sticker on the item, it would be almost impossible to do so after leaving the store as there would be nothing to compare the price on the register receipt to.

It is no secret that food costs are one of the biggest parts of a household budget, and looking for lower costs is important for many families as the price of food rises. In November 2010, the Office of Consumer Affairs and Business Regulation conducted a survey of three (3) grocery stores around Boston and the neighboring region, checking on prices for a number of everyday items such as bread, peanut butter, tuna and cereal. A total of thirty-four (34) store locations were surveyed, and it was discovered that the price of the same items ranged not only from grocery store

<sup>&</sup>lt;sup>2</sup>See OCABR Press Release, Patrick-Murray Administration's Division of Standards Fines Food Retailers \$143,000 for Item Pricing Violations (Sep. 7, 2010), <a href="http://www.mass.gov/?pageID=ocapressrelease&L=1&L0=Home&sid=Eoca&b=pressrelease&f=20100907\_DOS\_itempricing&csid=Eoca.">http://www.mass.gov/?pageID=ocapressrelease&L=1&L0=Home&sid=Eoca&b=pressrelease&f=20100907\_DOS\_itempricing&csid=Eoca.</a>

to grocery store, but also within the same grocery store chain.<sup>3</sup> Therefore, consumers need an easy way to comparison shop more than ever, and item pricing continues to serve as a quick and accurate means to do so.

Item pricing has not only proved to be a beneficial tool to shoppers, but is also the preferred method of price disclosure. In July 2009, Consumer World released a survey showing 2 out of 3 shoppers prefer to find out the price of an item by looking at the price sticker on the item itself, rather than some other way. In addition 95% of the people surveyed wished stores that did away with price stickers, like Target and CVS, went back to putting prices directly on these items. <sup>4</sup>

#### DANGERS OF PROPOSED ALTERNATIVES AND ALLOWING MORE EXEMPTIONS

The eight item pricing bills that appear before the committee today will derail the protections afforded to consumers, and once again, we must ask you to oppose them.

Some of these bills call for the installation of aisle scanners that would allow the consumer to price the item themselves. We believe replacing item pricing with aisle scanners is not the answer to clear price disclosure, especially when a shopper may have to travel two to three aisles over to find a scanner that may or may not be able to print a price label. This could become quite burdensome given the number of items grocery shoppers purchase at a time compared to other retail shopping. Surveyed consumers not only find these more difficult to use, but many scanners often fail to function properly or be in compliance with the Attorney General's regulations. In addition, aisle scanners provide no safeguard that a consumer has been charged the proper price after they leave a store.

Furthermore, allowing more exemptions for either food departments or food stores will only weaken a consumer's price awareness of an item—both grocery and non-grocery. Instead of being able to keep a "running tab" of how much one has spent just by looking at the stickers on goods in their shopping cart, a consumer will now be forced to estimate the total cost of their shopping trip unless they wish to scan all items if an in-aisle scanner is available. Unfortunately, sometimes shopping circumstances simply do not allow for this.

Finally, allowing more items, particularly sale items, to be placed on shelves without a price sticker does not guarantee accurate price disclosure even if a shelf tag and/or an additional sticker label is required. Shelf tags are often found to be out-dated or placed with wrong items while stickers are frequently removed or damaged by the general public. In this case, a sticker in the hand is truly worth more than two signs on the shelf.

<sup>&</sup>lt;sup>3</sup> See OCABR, Not All Grocery Stores the Same (Nov. 22, 2010), <a href="http://consumer.blog.state.ma.us/blog/2010/11/not-all-grocery-stores-the-same.html">http://consumer.blog.state.ma.us/blog/2010/11/not-all-grocery-stores-the-same.html</a>.

Consumer World® is a Boston-based, public service, non-commercial consumer resource website. See Consumer World, Shopping Survey by WBZ Call for Action for Consumer World (July 23, 2009), <a href="https://pincdn.s3.amazonaws.com/assets/345923e54fc8892f5b9172353203a45f/item-pricing-survey.doc.">https://pincdn.s3.amazonaws.com/assets/345923e54fc8892f5b9172353203a45f/item-pricing-survey.doc.</a>
In 2009, Consumer World Tested 150 aisle scanners at stores where the AG's rules allowed their use instead of item pricing. Fully

<sup>&</sup>lt;sup>5</sup> In 2009, Consumer World Tested 150 aisle scanners at stores where the AG's rules allowed their use instead of item pricing. Fully 70% of them failed to function properly, or otherwise comply with the law. *See* Consumer World, Retailers Flunk Scanner Test (July 23, 2009), <a href="https://www.masspirg.org/static/itemscanprsconsumerworld.pdf">https://www.masspirg.org/static/itemscanprsconsumerworld.pdf</a>.

#### **CONCLUSION**

Certainly in these tough economic times, we must recognize that consumers need *more* price disclosure, as violations of the current law are still being found within stores that our consumers depend on for their basic, essential needs. Weakening the enforcement mechanisms of the current law only allows retailers a greater opportunity to take advantage of the consumer in the marketplace. Removing labels from items that we find on the shelves cripples a consumer's basic right to know the price of an item before they make the choice as to whether or not they wish to purchase it. Each of these bills will help severely weaken a consumer's influence in the retail industry. As we have learned in the past, when a consumer's clout is compromised, an equal playing field no longer exists in the marketplace. Therefore, I ask the Committee oppose these item pricing bills.

Thank you for this opportunity to share our concerns. We look forward to continue working with this Committee to ensure an equal playing field exists between the consumer and the retailer in the marketplace.